IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1753 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMIR @ NARAYAN YANU PRADHAN - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS REKHA H KAPADIA for Appellant(s) : 1,
Mr.R.C.Kodekar, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 12/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal is filed under Section 374 of Criminal Procedure Code by the appellant – original accused who has been convicted by the learned Additional Sessions Judge, Fast Track Court No.6, Panchmahals at Godhra on 11.7.2005 in Sessions Case No.18 of 2005 for the offence under Sections 363, 366 and 376 of Indian Penal Code and sentenced him for 5 years rigorous imprisonment and fine of Rs.500/- i/d simple imprisonment for one month, 5 years rigorous imprisonment and fine of Rs.500/-, i/d simple imprisonment for one month and life imprisonment and fine of Rs.1000/-, i/d simple imprisonment for 2 months. All the sentences were ordered to run concurrently.

2. The facts, which have been established from the prosecution case, are as under :

2.1 On the date of the incident i.e., on 18.11.2004 at midnight, the complainant – Bhaijibhai Gemabhai Parmar and his family members including victim were sleeping in their house. According to the complainant, he was sleeping outside his room and inside the room his wife and children were sleeping. At about 1.00 a.m., his wife has informed him that their daughter i.e., victim is not in the room and therefore, they have tried to search her in the vicinity and they found that their daughter victim aged about 8 years was lying under the babool trees and she was crying. Therefore, the complainant and others have inquired about the same through her and

she has narrated the incident stating that one boy, who is staying adjoining to their house, has kidnapped her and taken near babool trees and she has been raped by that boy; thereafter, he left her there and ran away. They also found that there was bleeding on the vital part of her body and there were also various marks of injury on her body. Therefore, complainant went to Halol Police Station and filed the complaint to that effect, which has been registered as Halol Police Station I CR No.282 of 2004 under Sections 363, 366 and 376 of Indian Penal Code. Simultaneously, with police yadi, the victim has been taken to Referral Hospital, Halol where she has been examined by doctor and the external injuries which have been noticed by him have been noted in her case papers.

2.2 Thereafter, she has been referred to Civil Hospital. There also, she has been examined and treated. Meanwhile, accused was also arrested; panchanama of scene of offence was prepared; the clothes which alleged to have been worn by the victim and accused at the time of incident have been seized by way of separate panchanama and the muddammal which has been seized during the course of investigation has been sent to FSL and also recorded the statement of various witnesses.

2.3 At the end of investigation, charge sheet has been submitted and as it was a case exclusively triable by the Court of Sessions, the same has been

committed to the Court of Sessions, Panchamahals at Godhra. On receiving the same, it has been numbered as Sessions Case No.18 of 2005 and the same has been sent to the learned Additional Sessions Judge, Fast Track Court No.6, Panchamahals at Godhra. The charge was framed against the accused. The accused has pleaded not guilty and claimed to be tried.

2.4 To prove the charge against the accused, the prosecution has examined in all 14 witnesses. Out of them, P.W.6 Exh. 24 Bhaijibhai Khemabhai Parmar – complainant father of the victim, P.W.7 Exh.26 Shantaben Bhaijibhai Parmar – witness mother of the victim, P.W.8 Exh.27 Khatubhai Punjabhai Parmar – witness and P.W.11 Exh.51 Victim – Sushila Bhaijibhai Parmar are witnesses of incident. P.W.9 Exh.28 Dr.Saijal Ambalal Patel – Medical Officer Godhra Civil Hospital, P.W.10 Exh.41 – Dr.Kanubhai Khemabhai Katara, Medical Officer, Halol Referral Hospital and P.W.12 – Exh.12 Dr.Divyesh Mangalbhai Patel – Medical Officer, Godhra Hospital are medical officers, whereas P.W.1 to 5 – Exhs. 5,9,12,16 and 18 respectively, P.W.13 – Chandubhai Pargi – F.S.L. Officer, Exh.54 and P.W.14 – Vazesinh Wakhatsinh Rathod – Investigating Officer – Exh.58 are panch witnesses.

2.5 The prosecution has also produced and relied upon various documentary evidences. On submission of the closing purshis by the learned APP, learned Additional Sessions Judge has recorded further

statement of the accused under Section 313 of Criminal Procedure Code and, after giving opportunity to the parties concerned, he has delivered the judgment and accused was held guilty and sentence has been awarded which has given rise to this appeal.

3. Being aggrieved and dissatisfied with the same, the accused - appellant has sent the present appeal through jail authorities in the High Court and on receiving the same, it has been numbered as Criminal Appeal No.1753 of 2005 and same has been handed over to learned advocate Ms.Kapadia.

4. Heard Ms.Kapadia, learned counsel for the appellant and Mr.R.C.Kodekar, learned APP for the State.

5. After going through the judgment and original record which is available with the Court, mainly it has been argued by the learned counsel for the appellant that the incident, which has been narrated by the prosecution, is not believable one. She has also taken us to the oral evidence of the complainant who is the father of the victim and argued that his evidence is not trustworthy and he is not witness to the incident. It has also been argued by her that the evidence of other witnesses is also not trustworthy. There are lot of contradictions to that effect and according to her, it is required to be discarded. She also took us through the medical evidence of both the doctors and argued that even if

we accept the medical evidence in toto, then also the prosecution is not able to prove the offence. It has also been argued that so far the identification parade is concerned, as the accused, complainant and victim were known to each other as accused used to go to the house of the neighbour of the victim and, therefore, according to her, identification parade is only formality. It has also been argued by her that even if we accept all the facts which have been narrated by the prosecution, then also the sentence which has been awarded by the lower Court is on higher side and ultimately she has requested that it is a matter which requires consideration.

6. Learned APP Mr.Kodekar has objected the same mainly on the ground that the victim herself has identified the accused and also took us to the oral evidence of the complainant, victim and other witnesses. It has been argued that there is no possibility of mistake in identification because they were known to each other and she has categorically deposed and narrated the incident before the Court. Not only that, she has specifically identified the accused in Court also. It has also been argued that even in identification parade, accused has been identified by the victim. He took us through the medical evidence of both the doctors along with case papers and medical certificate and argued that medical evidence supports the case of the prosecution in toto. He further argued that there is no cross-examination by the appellant's side on

material point, more particularly, regarding the injury etc. on the vaginal part of the body of the victim and also on the point of penetration etc. It has also been argued that the prosecution is able to prove the age of victim by way of oral evidence as well as by way of ossification test and the opinion given by the doctor. It has been argued by him that age of the victim is about 6 to 7 years and showing the same it has been further argued that the way in which the incident has taken place and also keeping in mind the age of victim, the sentence which has been awarded by the Court, is not on higher side at all and it deserves no interference by this Court.

7. We have also gone through the oral as well as documentary evidence upon which reliance has been placed by the learned counsel for the respective parties along with the reasoned judgment and order and also given thoughtful consideration to the arguments advanced by the learned counsel for the respective parties.

It is required to be noted that it is an incident which has taken place at night at 1.00 a.m., that too also when the victim aged about 6 to 7 years was sleeping along with her mother and sister in the room. At that time, she has been kidnapped by the accused and taken to a lonely place very near to the babool tree where she has been raped by the accused and, thereafter, he left the scene of offence leaving behind the minor girl aged about 8 years at midnight

in a lonely place. When the mother of the victim informed her husband at about 1.30 a.m., regarding the fact that their daughter is not in the room and, therefore, they started inquiring in the vicinity and found the victim lying near the babool tree where she was crying. They have inquired from her regarding the incident whereupon she narrated the incident in detail. She has been taken in the house and, thereafter, they went to Halol Police Station and complaint to that effect has been registered and, thereafter, with police yadi the victim has been sent to Halol Referal Hospital and thereafter to Civil Hospital, Godhra.

8. It is also required to be noted that there are evidences on record which proved the guilt of the accused because the victim herself has narrated the incident and she gave the name of accused as the person who has kidnapped and raped her. Not only that, victim and other family members are also knowing him because he used to come to their neighbour's house. Therefore also, the question of misidentification may not be arising. Over and above, during the identification parade, accused has been identified by the witness. Not only that victim herself and others have also given evidence to that effect and nothing has come out in cross-examination. So, it has been established that the accused himself has kidnapped the victim from her house and raped her. For that also, from the medical evidence which is on record which shows that, the prosecution has

examined in all total 3 doctors – one from Referral Hospital, Halol and two from Civil Hospital, Godhra. Before we proceed, it is also required to be noted that the prosecution is also able to prove the age of victim by way of oral evidence and also by way of ossification test that at the time of incident, the age of victim was about 6 to 7 years. It is also required to be noted that both the doctors have categorically deposed before the Court, more particularly, P.W.10 Exh.41 Dr.Kanubhai Katara who was discharging his duties as Medical Officer on the day of incident i.e. 18.11.2004 at Halol Referral Hospital where the victim aged about 8 years was brought with police yadi for treatment. He has examined the victim and noted down injuries which she has received. It is also required to be noted that the injury certificate has also been proved along with the medical certificate Exh.44. There is no cross-examination on a material point by the learned counsel for the accused.

9. It has been categorically opined by both the doctors regarding the injury which she has received along with successive opinion that it was a case of penetration. It is also required to be noted that even though the specific evidence has been given by the doctor, there is no cross-examination on that point. Over and above, P.W.9 Dr.Saijal Patel Exh.28 has also deposed the same who was serving as a Medical Officer, Godhra General Hospital at Panchamahals at Godhra, where she has examined the

victim aged about 8 years who has been brought by woman constable along with police yadi. It is categorically opined by the doctor of Halol Referral Hospital. He has also proved the certificate exh.29. There is no cross-examination on material point even to that effect. So, the prosecution is able to prove that it was a case of rape wherein penetration has been proved and the injury to that effect has been found. Over and above that, injuries on various parts of the body including injury on the vaginal part of the victim have been found.

10. It is true that Dr.Saijal Patel, Godhra Hospital has not noted down other injuries which were on the part of the body of the victim and for that he has given explanation in his cross-examination that she has been referred to him for gynaec examination and further it has been explained by him that when he received the yadi, at that time, he noticed that the doctor of Halol Referral Hospital has noted down all the external injuries and, therefore, it was not necessary for him to write them again. His explanation is such which is required to be accepted. As far as rape is concerned, he has given specific evidence to that effect and proved the certificate also. Not only that, he has also proved the injury which she has received on her private part. It has been mentioned by the doctor that it is a case of penetration. In view of the above, it has been proved that she has been kidnapped and raped against her will. Therefore, it is a case in which we need not

interfere with the finding of the lower Court.

11. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of **State of Karnataka V/s Hemareddy** reported in **AIR 1981 SC 1417** which reads as under :

> “.... This Court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967) 1 SCR 93 : (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice.”

12. Under the above circumstances, appeal is required to be dismissed and it is accordingly dismissed. Notice is discharged.

(R.P.DHOLAKIA, J)

(SHARAD D DAVE, J)

srilatha